

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO.4144/1995
(Director, Central State Farm, Sardargarh Vs.
State of Rajasthan & Ors.)

Date of order : 8.12.2007

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Anil Bhandari on behalf of
Mr. N.M. Lodha, AAG.
Mr. Kulvinder S. Gill with
Mr. Mohan Lal, for respondent No.3.

By way of filing the present writ petition, the petitioner - Director, Central State Farm, Sardargarh District Sri Ganganagar has challenged the validity of award dated 22.4.1995 passed by Judge, Labour Court, Bikaner in Industrial Dispute Case No.98/1993 whereby the Judge, Labour Court while quashing the retrenchment order dated 27.4.1991 directed the petitioner - Farm to reinstate the non-petitioner No.3 - Workman and further passed an order for continuity in service and wages w.e.f. 10.5.1991.

According to the facts of the case, the non-petitioner-workman was appointed as daily rate worker by the petitioner - Farm w.e.f. 1.6.1976. Admittedly, the services of the non-petitioner No.3 - workman were terminated vide order dated 27.4.1991 and at the time

of terminating his services he was given retrenchment compensation so also notice. However, the Judge, Labour Court has held that compensation of Rs.2936.25 was paid to the workman whereas he was to be given compensation of Rs.6232.25 in accordance with the provisions of Section 25-F (a) and (b) of the Industrial Disputes Act, 1947 (hereinafter "the Act" only).

In this case, the petitioner- Farm has accepted that less compensation was paid to the non-petitioner No.3-workman but for the same, the employer cannot be held responsible because the said compensation was calculated as per the legal advice of their counsel - Shri Uttam Chand Gupta. Therefore, there was no fault of the employer. While raising this ground, it is prayed that the award may be quashed and set aside. It is also prayed that compliance of the provisions of Section 25-F of the Act was made but by mistake less compensation was paid and this mistake could have been rectified by the learned Judge, Labour Court himself and he was competent to pass an order to pay the deficit amount of compensation. I am unable to accept such contention because it is the duty of the employer to make compliance of provisions of Section 25-F of the Act. Admittedly, the non-petitioner No.3 workman worked for more than 15 years and his services were terminated in violation of the provisions of Section

25-F of the Act, which is evident from the finding of the Judge, Labour Court in the award itself. The petitioner's case is also based on the ground that this mistake has been committed as per the legal advice given by their counsel. In this view of the matter, while exercising the power under Articles 226 and 227 of the Constitution of India, this Court will not sit as an appellate authority to re-appreciate the findings considered by the Judge, Labour Court.

This Court in case of R.S.R.T.C. & Anr. Vs. Judge, Labour Court, Jaipur & anr., reported in 1984 RLR 981 has held that compensation as provided under Section 25-F (a) and (b) of the Act should be paid to the workman at the time of his retrenchment and the compensation is required to be calculated as per the provisions of Section 25-F (b) of the Act, which reads as under :

“Section 25F (b). the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months”

In the aforesaid judgment, it has been held that said compensation shall be paid after calculation till the date when the notice was served upon the

workman.

In the aforesaid view of the matter, I see no reason to interfere with the finding given by Judge, Labour Court with regard to violation of provisions of Section 25-F of the Act by the petitioner-employer and so also passing an order for reinstatement of the workman. However, in the facts and circumstances of the case, I deem it just and proper to modify the award impugned dated 22.4.1995 to the extent of payment of back-wages. The back-wages awarded by the Judge, Labour Court to the non-petitioner No.3 - workman w.e.f. 10.5.1991 to the date of reinstatement is set aside and the non-petitioner No.3 - workman is held entitled for only 25% back-wages for the said period. The said back-wages shall be paid to the non-petitioner No.3 - workman within a period of three months from today. Other part of the relief granted by Judge, Labour Court vide impugned award dated 22.4.1995 is upheld.

With the aforesaid modifications, this petition is partly allowed.

(GOPAL KRISHAN VYAS), J.

arun